UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MARK BAUGHMAN,	)	Case No.: 1:04 CV 563
	)	
Plaintiff	)	JUDGE SOLOMON OLIVER, JR.
	)	
v.	)	
	)	
JAMES HAVILAND, WARDEN,	)	
	)	
Defendant	)	ORDER

On March 23, 2004, Petitioner Mark Baughman (hereinafter, "Baughman") filed a petition for writ of habeas corpus (ECF No. 1) pursuant to 28 U.S.C. § 2254, challenging the constitutionality of his state court jury trial conviction for retaliation under R.C. 2921.05(A) for making a written threat against Judge Franks, who had previously sentenced him. Baughman argues that he was denied the effective assistance of counsel when his appellate counsel failed to raise on appeal that Baughman's letter to Judge Franks was protected speech under the First and Fourteenth Amendments. This court referred the case to Magistrate Judge James S. Gallas for preparation of a Report and Recommendation. Both parties filed briefs in support of their respective positions. (*See* ECF. Nos. 11, 15.) The Magistrate Judge then submitted his Report and Recommendation on March 21, 2006, recommending that Baughman's petition for habeas corpus under 28 U.S.C. § 2254

be denied and dismissed. (ECF No.16.) Baughman filed Objections to the Report and Recommendation on May 4, 2006. (ECF No. 18.)

The court finds, after careful review of the Magistrate Judge's Report and Recommendation and all other relevant documents, that the Magistrate Judge's conclusions are fully supported by the record and controlling case law. Accordingly, the court adopts as its own the Magistrate Judge's Report and Recommendation. (ECF No. 16.) Baughman's petition for a writ of habeas corpus is hereby denied. The court further certifies that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

/s/*SOLOMON OLIVER, JR.*
UNITED STATES DISTRICT JUDGE

May 8, 2006